

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Inquiry Concerning High-Speed Access to the	)	GN Docket No. 00-185
Internet Over Cable and Other Facilities	)	
	)	
Internet Over Cable Declaratory Ruling	)	
	)	
Appropriate Regulatory Treatment for Broadband	)	CS Docket No. 02-52
Access to the Internet Over Cable Facilities	)	

**REPLY COMMENTS OF  
THE CABLE MODEM COALITION**

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## SUMMARY

An essential element of cable modem services that has been overlooked by the Commission and other commenters in this proceeding is the cable modem itself. The cable modem market has the potential to be among the most vibrant and competitive in the broadband space. The CableLabs research consortium has certified over 100 cable modems from over 60 different manufacturers as compliant with the industry's technical standards for portable, interoperable cable modems, and many of these certified modems are available to consumers at retail. Yet according to some estimates fewer than ten percent of cable broadband subscribers currently purchase their cable modems at retail; most rent the modem from the cable broadband service provider. Why? This consumer behavior is driven not by competitive considerations but by the distorted pricing practices of some cable broadband service providers. Put simply, contrary to the clear intent of Congress as reflected in Section 629 of the Communications Act, some cable operators are subsidizing the cost of the cable modem and hiding these expenses from consumers. And recent pricing changes threaten to stifle even further the retail market for cable modems.

If cable operators' current pricing practices are allowed to continue, one can readily foresee a future in which cable operators hold great sway over the equipment used to access not only the Internet, but voice-over-IP and telephony, video-on-demand, home networking, and multimedia services. The result will be a decline in the number of cable modem manufacturers and a contracted cable modem market that cable operators direct and control. The ultimate consequence to consumers will be a less vibrant cable broadband service market characterized by higher prices and less variety in cable modem features and services. The consequence for national broadband deployment — the goal of this proceeding — will be less

consumer “buy-in” and investment in the broadband future. As a result, the Commission’s goal of promoting broadband deployment will be compromised.

To address this issue, the Cable Modem Coalition proposes a simple anti-subsidy rule for cable modems. The Commission has ample authority to take this important step. The express provisions of Section 629 of the Communications Act direct the Commission to adopt regulations that prevent cable operators from subsidizing their own provision of equipment used to access services offered over their systems. The overarching goal of Section 629 — the promotion of a competitive retail market for equipment (including cable modems) used to access services offered over multichannel video programming systems — further supports the Commission’s exercise of ancillary jurisdiction under Title I to regulate the pricing practices of cable broadband service providers offering cable modems to their subscribers.

The Coalition’s proposed cable modem anti-subsidy rule is also fully consistent with the Commission’s policy goals. The anti-subsidy rule will protect cable modem consumers and encourage the development of a competitive retail market for cable modem devices, which will stimulate demand for and deployment of cable broadband services and features. In the absence of such a rule, this virtuous cycle will be arrested, and the intent of Congress thwarted, by cable operators’ continued subsidies of the consumer equipment they provide. The simplified rule will impose only a very limited regulatory burden on cable broadband service providers and is consistent with the regulatory framework applicable to wireline broadband service providers.

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**REPLY COMMENTS OF  
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The Cable Modem Coalition (“Coalition”)<sup>1</sup> urges the Commission in this proceeding to address an issue that is important to the future of Internet over cable: assuring the consumer’s right to buy a cable modem at retail without suffering an economic disadvantage in comparison to the consumer who obtains the cable modem from the cable broadband service provider. Absent prompt Commission action to prohibit cable operators from subsidizing their own cable modem rentals and sales, the nascent retail market for cable modems will be supplanted by a cable modem equipment and services market directed and controlled by cable broadband service providers. The result for consumers ultimately will be higher prices and less variety in cable modem features and services.

The *Notice of Proposed Rulemaking* in the above-captioned proceeding asks whether and to what extent the Commission should regulate the provision of cable modem services pursuant to its authority under Title I of the Communications Act (the “Act”) and

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<sup>1</sup> The Cable Modem Coalition represents the interests of cable modem manufacturers and retailers committed to meaningful consumer choice in the retail market for cable modems used to access increasingly significant cable broadband services.

consistent with its determination that broadband services offered over cable are an “information service.”<sup>2</sup> One issue that did not receive much attention in the initial comments filed in the proceeding but that must be addressed in any package of cable broadband regulations the Commission adopts concerns the pricing of cable modems themselves. To further the Commission’s stated goal of promoting the widespread availability of cable broadband services, the Cable Modem Coalition urges the Commission to take steps in this proceeding to ensure, consistent with the goals of the *Notice* and with the purposes of Section 629 of the Act, that cable operators offering cable broadband services separately state cable modem charges and refrain from subsidizing their own provision of cable modems.

## **I. BACKGROUND**

As the Internet has become richer with content and easier to navigate, high-speed Internet, or broadband, access has become an important force in the communications industry and society. Today, cable is the preferred “pipe” for residential broadband service in the United States, with between 65 and 70 percent of broadband subscribers currently choosing cable over other broadband access options.<sup>3</sup>

### **A. The Potential Exists For The Emergence Of A Competitive Retail Market For Cable Modems.**

Cable operators initially began offering Internet access service over cable in the mid-1990s. At first, cable operators offered Internet access using proprietary systems and cable

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<sup>2</sup> *In re Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, Notice of Proposed Rulemaking, 17 FCC Rcd 4798, 4842 (2002) (*Notice*).

<sup>3</sup> *Id.* at 4802-03. *See also Federal Communications Commission Releases Data on High-Speed Services for Internet Access*, News Release (rel. July 23, 2002) (indicating that as of December 31, 2001, 7.1 million of the 11 million residential broadband subscribers in the United States used cable modem service).

modems, giving consumers no choice in any aspect of cable modem service.<sup>4</sup> However, beginning in 1995, CableLabs began developing a standard for interoperability between cable modems and cable headends known as the Data-Over-Cable Service Interface Specification (“DOCSIS”).<sup>5</sup> The DOCSIS project developed open standards for cable modems and a rigorous certification program to identify cable modems that comply with the DOCSIS standard. One of the cable operators’ self-interested motives for supporting the DOCSIS project was to encourage pricing competition in the wholesale cable modem market.<sup>6</sup> However, CableLabs also contends that the DOCSIS project enables the development of a retail market for cable modems.<sup>7</sup> Indeed, in theory consumers now have the ability to purchase at retail a variety of portable, DOCSIS-compatible cable modem models from manufacturers such as Linksys, Motorola, RCA, Toshiba, and Zoom.<sup>8</sup> In practice, however, cable operators’ cable modem pricing practices deprive many consumers of any meaningful choice in the purchase of cable modems.

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<sup>4</sup> Cable service remains a monopoly in almost all parts of the country, with its only meaningful competition coming from Digital Broadcast Satellite (“DBS”). Cable subscribers have a choice of cable providers in only approximately one percent of the country. *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 17 FCC Rcd 1244, 1299 (2002).

<sup>5</sup> *See CableModem FAQ*, at <http://www.cablemodem.com/FAQs.html> (last visited August 5, 2002) (*CableModem FAQ*). DOCSIS is also known as The CableLabs Certified Cable Modem Project. *Id.*

<sup>6</sup> *See CableModem FAQ*, at #FAQ4 (“For cable operators, [DOCSIS] specifications enable compatible products to be sourced from multiple vendors in a timely fashion . . .”).

<sup>7</sup> *See, e.g., CableModem FAQ*, at #FAQ1 (“The project also provides cable modem equipment suppliers with a fast, market-oriented method for attaining cable industry acknowledgement of DOCSIS compliance and has resulted in high-speed modems being certified for retail sale.”).

<sup>8</sup> To date, CableLabs has certified well over 100 DOCSIS-compliant cable modems from over 60 different manufacturers. *See CableModem FAQ*, at #FAQ5.

**B. Cable Operators' Pricing Practices Constrain Development Of A Retail Market For Cable Modems And Distort The Cable Broadband Service Market.**

Some cable operators are suppressing the development of a retail cable modem market by routinely pricing the cable modem they offer so that it does not accurately reflect the true cost of the modem. The most aggressive cable operators blend the cable modem rental fee into the monthly broadband service fee, offering no discount to customers who purchase their own cable modems.<sup>9</sup> This pricing scheme provides a powerful economic disincentive to consumers' purchasing cable modems in the retail market. While these operators essentially price cable modems at zero, other cable operators charge a separate cable modem rental fee ranging from \$3 per month, which affords only a token discount to subscribers purchasing their own modem, to \$15 per month, which yields a discount or credit much closer to the actual costs to the cable operator.<sup>10</sup> In situations where the monthly rental fee for modem renters (and, consequently, the discount to cable modem owners) represents the true cost of cable modems, the retail marketplace for cable modems has the opportunity to flourish, giving consumers a wide variety of choices and driving retail cable modem prices down.

Unfortunately, cable operators increasingly are moving away from more realistic price models and toward cable modem pricing practices that disproportionately affect consumers who own cable modems. The effect is to artificially depress demand for cable modems available at retail. While exact prices vary by market, a few examples demonstrate the trend:

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<sup>9</sup> Time Warner Cable is an example of a prominent cable operator that does not discount its service to customers who purchase their own cable modems. See Karen Brown, "AT&T Ups Modem-Owner Fees," *Multichannel News*, June 3, 2002, at 2 (*Modem-Owner Fees*).

<sup>10</sup> Among the nation's major cable operators, AT&T Broadband offers a discount to cable modem owners of \$3, Comcast offers a discount of \$5, while Cox offers a discount of between \$10 and \$15 depending on the market. *Id.*



- In May 2002, AT&T Broadband announced a rate hike in which customers who own cable modems would pay an additional \$7 per month, while those customers who lease cable modems from AT&T would face no fee increase. Customers who lease their cable modems from AT&T would continue to pay \$45.95 per month, but only \$3 — down from \$10 — would be attributable to the cable modem rental fee. Thus, cable modem owners saw their fees rise \$7 per month, from \$35.95 to \$42.95.<sup>11</sup>
- In late April 2002, Mediacom — a cable operator in the Springfield, Missouri region — increased its rates for cable modem owners by \$11, from \$29.95 per month to \$40.95 per month. Customers who rent cable modems from Mediacom saw their rates go up by only \$6, from \$39.95 to \$45.95. In other words, the monthly credit to cable modem owners went down from \$10 to \$5.<sup>12</sup>
- In September 2001, Comcast raised the fees paid by cable modem owners by \$9, from \$25.95 per month to \$34.95 per month. In contrast, fees paid by customers who rent cable modems from Comcast went up by only \$7. Thus, the credit to cable modem owners went down from \$7 to \$5 per month.<sup>13</sup>
- Time Warner Cable, meanwhile, continues to subsidize cable modems completely, offering *no discount* to subscribers who supply their own cable modems.<sup>14</sup>

In cases such as these, cable modem owners are forced to pay disproportionately higher cable broadband service rates relative to subscribers who rent cable modems from the cable operator. Apart from hurting consumers who have already invested in their own cable modems, these pricing policies understandably make consumers much less willing to purchase

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<sup>11</sup> Peter J. Howe, "AT&T Broadband to Hike Rates for Cable Modem Owners; Equipment Renters Will Be Unaffected," *The Boston Globe*, May 29, 2002, at C1; *Modem-Owner Fees*, at 2; Toni Kistner, *Cutting Through the Cable Modem Madness*, at <http://www.pcworld.com/news/article/0,aid,101846,00.asp> (*Cable Modem Madness*).

<sup>12</sup> Karen E. Culp, "Mediacom Set to Raise Net Fees," *Springfield News-Leader*, May 1, 2002, at 1B.

<sup>13</sup> Christopher Stern, "Comcast to Raise Internet Service Fee," *Wash. Post*, Sep. 19, 2001, at E11; Karen Brown, "Comcast Hikes Rates For High-Speed Data," *Multichannel News*, Sep. 24, 2001, at 8.

<sup>14</sup> *Modem-Owner Fees*, at 2; *Cable Modem Madness*.

cable modems at retail.<sup>15</sup> The effect of these pricing policies is amplified in the cable modem market, where DOCSIS standardization currently leaves little room to compete on features other than price. Although CableLabs certifies cable modems that meet open interoperability standards, the long certification cycles significantly increase the time to market for new modems and the standard itself limits the areas of innovation a manufacturer can use to differentiate its cable modem products. For example, a manufacturer cannot even change the color or case design of a modem without going through a three-month CableLabs re-certification process. And manufacturers cannot include popular Internet Gateway features like routing and firewall capability in their cable modems without CableLabs approval of the technology. Because of these limitations on a cable modem manufacturer's ability to compete on the basis of product features, cable operators' use of subsidies to price the operators' modems at zero or a nominal rate clearly drive consumers away from purchasing cable modems at retail.

Predictably, the result of the recent pricing behavior described above has been a decline in retail sales of cable modems even as consumers have continued to sign up for cable broadband service at a steady rate. For example, following the recent AT&T Broadband reduction in the monthly credit for subscribers who own their own modems, retail sales of cable modems fell dramatically in AT&T Broadband service areas. At this point, of the over 7 million cable broadband subscribers in the United States, an estimated 10 percent own their cable

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<sup>15</sup> Indeed, the cable operators' dramatic and sudden changes in cable modem rental (or discount) rates themselves create a disincentive to purchasing a cable modem at retail because such unpredictable changes make it difficult to predict the future cost savings of the investment.

modems, including those who bought the devices directly from the cable operator and not at retail.<sup>16</sup>

A robust retail offering of cable modems would promote widespread availability of cable broadband services by increasing consumer awareness, attracting long-term users and giving consumers a sense of investment in broadband. On the other hand, the long-term effect of cable operators' distorting the modem market by subsidizing their own provision of cable modems will be to stymie the development of a retail market that otherwise could help to assure that consumers receive the best combination of price, product, and service for their broadband dollar. If the Commission fails to take steps to halt cable operators' price-distorting behavior and encourage the development of a retail cable modem market, it will lose an important opportunity to promote widespread broadband deployment and will leave cable broadband service providers in a position to control the availability and features of both the network *and* the equipment used to provide the next generation of broadband technologies. Without straining, one can foresee a future in which cable operators hold great sway over the equipment (and the features thereof) used to access voice-over-IP and telephony, video-on-demand, home networking, and multimedia services. Commission action in this proceeding can prevent this eventuality and ensure that the market remains open and robust.

## II. DISCUSSION

The *Notice* asks what rules, if any, the Commission should adopt to further its regulatory policy goals with respect to cable broadband services, including promoting cable broadband infrastructure deployment. The initial comments filed in this proceeding focus

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<sup>16</sup> See *Modem-Owner Fees*, at 2 (noting that 90 percent of AT&T Broadband subscribers leased cable modems when the discount offered to cable modem owners was \$10).

primarily on rules affecting the manner in which cable broadband services are provided and the way in which such services are regulated at the local level. But a Commission decision addressing only the services provided over cable broadband facilities and not the equipment used to access those services would be incomplete. The Cable Modem Coalition urges the Commission to include in any package of cable broadband regulations it adopts simple regulations designed to promote competition in the market for cable modem equipment. The Coalition's proposed rule is consistent with express statutory provisions in the Act, not unduly burdensome, and would serve the public interest by significantly advancing the Commission's policy goals in this proceeding.

**A. The Commission Should Adopt A Rule In This Proceeding Promoting Consumers' Right To Select And Use Their Own Cable Modem Device Without Financial Penalty.**

To remedy the current constraints on the retail cable modem market, to promote competition and the widespread availability of broadband services, and to remove barriers to infrastructure development, the Commission's decision in this proceeding should include regulations addressing the pricing of cable modems leased to customers as part of their cable broadband service. This issue is essential to the development of a competitive market for cable modem devices and to the development of a vibrant, competitive broadband service market generally. Without such measures, cable broadband service providers will consolidate an effective monopoly over the supply of cable modems that ultimately could lessen innovation and mask higher service charges to consumers.

**1. *The Commission should prohibit cable operators from using cable modem subsidies that discourage the commercial availability of cable modems.***

The cable modem pricing policies of some cable operators, particularly after the recent pricing behavior described above, have discouraged the development of a competitive retail market for cable modems. By shifting charges from equipment to service, cable operators have created disincentives for consumers to invest in their own cable modems purchased at retail and have consolidated their control over the market for cable modem equipment and the services available through such equipment.

This practice is inconsistent with the goal of “ubiquitous availability of broadband to all Americans”<sup>17</sup>; it also runs contrary to Section 629 of the Act, which charges the Commission with promoting the retail availability of navigation devices.<sup>18</sup> In its *Navigation Devices Order*, the Commission ruled that cable modems are included in the category of equipment covered by Section 629.<sup>19</sup> Thus, the Commission has an ongoing statutory obligation to assure that cable operators are not subsidizing the costs (including acquisition, warehousing, shipping and handling and support costs) of the cable modems they provide.

In its initial rules implementing Section 629, the Commission adopted a crabbed reading of the plain statutory language of Section 629 and found anti-subsidy rules not applicable to cable modems or other equipment used to access non-basic services offered over cable. Despite the clear statutory language, the Commission narrowed the reach of what Congress

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<sup>17</sup> Notice, 17 FCC Rcd at 4801 (citation omitted).

<sup>18</sup> See 47 U.S.C. § 549(a).

<sup>19</sup> *Implementation of Section 304 of the Telecommunications Act of 1996*, 13 FCC Rcd 14,775, 14,784 (1998) (*Navigation Devices Order*). In fact, the Commission considered and rejected requests to exclude cable modems from Section 629. See *id.* at 14,785.

wrote and applied the anti-subsidy rules only to equipment used to access rate-regulated basic cable service.<sup>20</sup>

The discussion in Part I above demonstrates what concerned Congress but the Commission's initial *Navigation Devices Order* failed to recognize — that cable operators' pricing decisions can have a significant effect on the emergence (or lack thereof) of a competitive retail market for equipment used to access non-basic services. Given the evidence of this effect, and, most importantly, in the context of a Commission effort designed specifically to promote the benefits of competition in the market for cable broadband, it is now time for the Commission to respond to the clear statutory language and adopt rules prohibiting cable operators from subsidizing cable modem equipment charges with charges for cable broadband or other cable services.

In adopting an anti-subsidy rule applicable to cable modems, the Commission should be guided by the principles embodied in the basic equipment anti-subsidy rules, but it can simplify the rule for cable modems and minimize the regulatory burden imposed on cable operators to reflect the more relaxed regulatory framework applicable to cable broadband services.

***2. The Commission should adopt the Cable Modem Coalition's proposed cable modem anti-subsidy rule.***

Section 76.923 of the Commission's rules sets forth the requirements for determining rates applicable to equipment used to access basic cable services. Essentially, the rule requires cable operators to charge a monthly equipment fee that recovers (i) the acquisition costs of the equipment itself, (ii) the material and labor costs of providing, leasing, installing,

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<sup>20</sup> *Id.* at 14,810.

repairing and servicing that equipment, and (iii) a reasonable profit. 47 C.F.R. § 76.923(c)-(f).

Rate-regulated cable operators must file regular reports with local franchising authorities demonstrating that their basic equipment rates comply with the rule. 47 C.F.R. § 76.923(n).

In the cable modem context, the Cable Modem Coalition proposes that the Commission require cable operators offering cable modems to their subscribers to separately state charges for cable modems and to set the monthly rates for those modems based on a simplified formula designed to recover the same general categories of costs recovered under the basic equipment rules. Specifically, the *minimum* monthly rate for a cable modem (or monthly discount for a subscriber using his own modem) would be determined by taking the acquisition cost (*i.e.*, the price) of the modem, adding certain fixed costs, multiplying the total by a presumptive factor designed to reflect overhead costs and additional costs related to providing the modem and by a reasonable profit factor, and dividing the product by the number of months over which the modem costs can reasonably be expected to be recovered. This approach is reflected in the following formula:

$$\text{Monthly Rental Fee/Modem Owner Discount} \geq (\text{CM} + \text{AC}) * \text{MF} * \text{PF} / 12$$

where

CM = wholesale cable modem price as delivered;

AC = added costs = delivery of modem to subscriber (\$15) + warranty/warranty service (\$2) + customer telephone support (\$5) = \$22;

MF = multiplier factor for overhead and costs of carrying inventory = 1.03; and

PF = reasonable profit factor = 1.5

The presumptive figures proposed by the Coalition are based on our experience and understanding of the relevant costs of leasing cable modems to subscribers, but there may be additional costs not accounted for in this formula. The Commission should seek additional information from cable operators to ensure that the formula ultimately adopted reflects the operators' actual costs of providing leased cable modems to consumers.

Because the use of presumptive figures for additional costs makes this formula straightforward and relatively transparent, it could be enforced through the Commission's complaint procedures rather than through a reporting requirement. That is, cable operators would not be required to file additional reports with either the Commission or local franchising authorities demonstrating that their cable modem prices comply with the formula, but an aggrieved entity believing that an operator's separately stated charges for cable modems did not satisfy the rules could file a complaint with the Commission seeking to revise the operator's rates.

**B. The Proposed Rule Is Consistent With The Commission's Statutory Authority And With The Goals Of This Proceeding.**

Express statutory provisions support the action proposed by the Coalition in this proceeding. Moreover, it is entirely appropriate for the Commission to take this action here either pursuant to express statutory authority or Title I ancillary authority because the proposed rule will advance the goals underlying this proceeding.

**1. *The Act expressly directs the Commission to protect cable modem consumers and to promote the development of a competitive market for cable modem equipment and services.***

The Coalition agrees with the many commenters asserting that the Commission's ancillary authority to promulgate regulations to effectuate the goals and accompanying provisions of the Act extends to cable broadband services.<sup>21</sup> In addition to a claim of ancillary jurisdiction, the *Notice* asked commenters to identify "any explicit statutory provisions . . . [that] would be furthered by the Commission's exercise of ancillary jurisdiction over cable modem

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<sup>21</sup> *Notice*, 17 FCC Rcd at 4841-42; see also Comments of Earthlink, Inc., at 11-14; Comments of SBC Communications, Inc., at 25, 29-30; Comments of Telecommunications for the Deaf, Inc., at 7-8; Comments of United States Telecom Association, at 6; Comments of Verizon, at 10-11; Comments of Arizona Cable Telecommunications Association, et al., at 9.



service.”<sup>22</sup> With respect to the cable modem anti-subsidy rule proposed by the Coalition, the explicit statutory provisions the *Notice* seeks are found in Section 629 of the Act, which affirmatively requires the Commission to adopt anti-subsidy regulations consistent with those proposed by the Coalition. As noted above, Section 629 requires the Commission to adopt regulations to assure the development of a competitive retail market for cable modems and equipment used to access services offered over cable systems. Specifically, the section states that multichannel video programming distributors can offer to their subscribers “interactive communications equipment, and other equipment used by consumers to access . . . services offered over multichannel video programming systems” *provided that* “the system operator’s charges to consumers for such devices and equipment *are separately stated and not subsidized by charges for any such service.*” 47 U.S.C. § 549(a) (emphasis added). Under this provision, cable broadband service providers can offer cable modems to subscribers to their cable broadband services, but the charges for those modems must be separately stated and not subsidized by service charges. Thus, the Commission would further the express provisions and the underlying goals of Section 629 by asserting jurisdiction and adopting the rule proposed herein.<sup>23</sup>

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<sup>22</sup> *Notice*, 17 FCC Rcd at 4842.

<sup>23</sup> To the extent that the Commission believes the Coalition’s proposed anti-subsidy rule does not fit precisely within the express mandate of Section 629, the underlying goals of that section and the statutory provisions supporting the widespread availability of broadband services support the exercise of ancillary authority to adopt such a rule regulating cable modem pricing. *Cf. Amendment of Section 64.702 of the Commission’s Rules and Regulations (Second Computer Inquiry)*, Final Decision, 77 F.C.C.2d 384, 452 (exercising ancillary jurisdiction over equipment used to provide service subject to Commission regulation), *modified*, 84 F.C.C.2d 50 (1980), *aff’d sub nom.*, *Computer & Communications Indus. Ass’n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982).

**2. *The proposed anti-subsidy rule is entirely consistent with the Commission's stated goals in the Notice.***

The *Notice* identifies three principal goals guiding the Commission in this proceeding: (1) encouraging the “ubiquitous availability of broadband to all Americans” by “regulatory forbearance, measures that promote competition . . . , or other regulating methods that remove barriers to infrastructure investment”; (2) maintaining “a minimal regulatory environment [for broadband services] that promotes investment and innovation in a competitive market”; and (3) developing a rational framework that promotes, to the extent possible, consistent regulation of competing broadband services provided via different technologies and network architectures.<sup>24</sup> The anti-subsidy rule proposed by the Coalition is consistent with each of these goals.

*Promoting Broadband Deployment.* Congress and the Commission have long recognized that regulatory measures designed to promote a competitive retail market for devices used to access telecommunications and related services can spur the development of high-quality, competitively-priced, innovative devices, which in turn drives demand for the services those devices are used to access. The telephone customer premises equipment (“CPE”) market presents the primary example of this effect. Following the Commission’s *Carterfone* decision affording consumers a right to attach any CPE to the telephone network that did not harm the network<sup>25</sup> and the Commission’s subsequent enactment of the Part 68 rules establishing basic technical standards for equipment to be attached to the public telephone network,<sup>26</sup> there was an

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<sup>24</sup> *Notice*, 17 FCC Rcd at 4801-02.

<sup>25</sup> *Use of Carterfone Device In Message Toll Telephone Service*, 13 F.C.C.2d 420, 423-24, *recon. denied*, 14 F.C.C.2d 571 (1968).

<sup>26</sup> *See* 47 C.F.R. § 68.100 *et seq.*

explosion in the development of devices utilizing the public telephone network. Equipment manufacturers introduced answering machines, faxes, and modems. The availability of these devices has led to a dramatic increase in the demand for telecommunications capacity, particularly for the transmission of data. Clearly, these new devices were an engine in the growth and development of the public switched network.

Congress specifically sought to promote these types of competitive and consumer benefits when it adopted Section 629 of the Act requiring the Commission to take steps (including eliminating unfair equipment subsidies) to assure the development of a similar competitive market for devices (including cable modems) used to access services offered over cable and other multichannel video programming systems.<sup>27</sup> Congress and the Commission expected that the emergence of a competitive market for navigation devices would lead to the development of innovative devices (including cable modems) used to access a variety of services available over multichannel video programming systems, which would in turn spur the development of and demand for such services.<sup>28</sup> This virtuous cycle is arrested, and the intentions of Congress thwarted, if cable operators are permitted to subsidize consumer equipment.

Consistent with Congress's expectations, encouraging the development of a competitive market for cable modems through the proposed anti-subsidy rule will promote

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<sup>27</sup> See, e.g., H.R. Rep. No. 104-204, 104th Cong., 1st Sess. 112 (1995) (noting that "competition in the manufacturing and distribution of consumer devices has always led to innovation, lower prices and higher quality. Clearly, consumers will benefit from having more choices among telecommunications subscription services arriving by various distribution sources.").

<sup>28</sup> See *id.*; *Navigation Devices Order*, 13 FCC Rcd at 14,784-85 ("Just as the *Carterfone* decision resulted in the availability to the consumer of an expanding series of features and functions related to the use of the telephone, we believe that Section 629 is intended to result in the widest possible variety of navigation devices being commercially available to the consumer.").

demand for and investment by consumers in cable broadband services. Promoting a competitive market for cable modems will drive down retail cable modem prices and encourage the development of improved cable modem features, thereby stimulating consumer demand for cable modems and cable modem service. Greater consumer investment in cable modems will encourage consumer demand for cable broadband services because subscribers who have invested in their own cable modem are more likely to commit to adopting and using broadband services for the long term than subscribers who are renting the modem from their service provider. The emergence of a group of committed broadband customers will stimulate the development of new broadband content, which in turn will stimulate further broadband deployment and demand. Moreover, the availability of innovative cable modem devices incorporating advanced features such as IP telephony, video-on-demand, and home networking (to the extent CableLabs standards enable retail deployment of such devices) will encourage cable broadband service providers to deploy these services. On the other hand, in the absence of a competitive market for cable modem devices cable operators will exercise dominant control over the availability and features of these and other new technologies.

A competitive retail market for cable modem equipment also will, where possible, encourage competition between cable modem service providers. To the extent that cable modem service is available from multiple providers in a geographic area, such as overbuilders, subscribers who have purchased their own portable, DOCSIS-compliant cable modems at retail will have more freedom to switch providers without having to de-install and re-install rented cable modems.

Finally, the anti-subsidy rule proposed by the Coalition will promote competition between cable modem services and other broadband services. If cable modem service providers

are required to separately state equipment and service charges, consumers will be able more readily to compare prices and value across broadband service alternatives.

Minimizing Regulatory Burdens. The anti-subsidy rule proposed herein will impose only a very limited regulatory burden on cable operators while producing important pro-competitive and pro-consumer results. The specific rule advocated by the Coalition offers cable system operators a simple formula for determining appropriate monthly cable modem charges (or discounts for cable modem owners) while imposing no new filing requirements and enabling aggrieved parties to bring complaints before the Commission.

Rational Regulatory Framework For All Broadband Services. The anti-subsidy rule supported by the Coalition could and should be part of a rational regulatory framework applied to all broadband service providers. There is ample precedent in the Commission's rules and in the Communications Act for requiring unbundling of equipment and charges therefor used to access broadband services over wireline telecommunications facilities, and indeed the rule proposed herein is consistent with the regulatory framework affecting wireline broadband providers.

\* \* \*

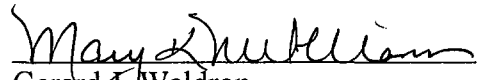
### CONCLUSION

For the foregoing reasons, the Cable Modem Coalition urges the Commission to adopt the proposed anti-subsidy rule and assure that consumers have the right to purchase a cable modem at retail without suffering a financial penalty vis-à-vis subscribers obtaining their cable modems from cable broadband service providers. By preventing cable operators from subsidizing cable modems, the proposed rule serves the public interest by promoting the retail market for cable modems and consumer investment in cable broadband services and thereby advancing the Commission's goal of promoting broadband deployment.

Respectfully submitted,

CABLE MODEM COALITION

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